

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HOIKAM GARMENT CO., LTD,

Plaintiff(s),

-against-

RAND INTERNATIONAL ACQUISITION LLC,

Defendant(s).

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**REPORT AND
RECOMMENDATION**

CV 09-0047 (ADS) (WDW)

WILLIAM D. WALL, United States Magistrate Judge:

A Scheduling Order was entered in this case on May 20, 2009. Docket Entry (“DE”) [23]. Although that Order scheduled a pretrial conference to be held on January 26, 2010, neither party appeared at the conference, and neither party submitted a letter regarding the failure to appear. A further conference was scheduled for March 26, 2010. *See* Order, DE [24]. The day before that conference, defense counsel filed a letter advising that an involuntary petition in bankruptcy had been filed against the defendant. *See* DE [25]. In light of this representation, the undersigned adjourned the conference and directed the parties to file a status letter by October 1, 2010. Neither party filed a status report as ordered.

On May 18, 2011, an Order for Written Status Report was issued, directing plaintiff to inform the court of the status of the case within ten days of the order. Order, DE [26]. The Order warned plaintiff that failure to respond could result in a report and recommendation that the case be dismissed. Despite this warning, plaintiff has not complied with the Order and has not contacted the court in any manner.

Rule 41(b) gives the district court power to dismiss a complaint “for failure to comply with a court order, treating noncompliance as a failure to prosecute.” *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995). Here, the plaintiff failed to comply with the court’s orders of March 25, 2010 and May 18, 2011. Since the plaintiff has failed to prosecute this matter and has not complied with the prior orders of the court, the undersigned recommends that the case be dismissed with prejudice, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

OBJECTIONS

A copy of the Report and Recommendation is being sent to all parties by electronic filing. Any objections to this Report and Recommendation must be filed with the Clerk of the Court within 14 days. *See* 28 U.S.C. §636 (b)(1); Fed. R. Civ. P. 72; Fed. R. Civ. P. 6(a) and 6(d). Failure to file objections within this period waives the right to appeal the District Court’s Order.

See Ferrer v. Woliver, 2008 WL 4951035, at *2 (2d Cir. Nov. 20, 2008); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996).

Dated: Central Islip, New York
July 26, 2011

/s/ William D. Wall
WILLIAM D. WALL
United States Magistrate Judge